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17.11.2021
Ct. No. 16

FMA 692 of 2021
with
IA No. CAN 1 of 2021

Cygnet Industries Ltd.
vs.
State of West Bengal & ors.

Mr. Soumya Majumdar
Mr. Malay Kr. Seal

... for the appellant

Mr. Susanta Pal
Mr. Ananda Dulal Sarkar

... for the State

Mr. Suvadip Bhattacharya
Mr. Balaram Patra

... for respondent no. 4

Being aggrieved by the order dated 12.03.2021 and the judgment dated 06.04.201 passed in WPA 4785/2021, the present appeal has been filed by the appellant management. The impugned order in the writ petition was the final award dated 19.02.2020 passed by the learned First Industrial Tribunal, West Bengal in case No. VIII-02/2011. The respondent workmen raised a dispute regarding his dismissal before the Government and the Government referred the dispute for adjudication before the Industrial Tribunal. There were three charges framed against the workmen one of which was charge of dishonesty, secondly, causing of willful damage and loss to the company's goods and thirdly, act of subversive of discipline. The Industrial Tribunal after considering the facts of the matter held that the domestic enquiry was validly held by the management. Apart from that it also

held that the charge of willful damage or loss of the company's goods and act subversive of discipline were proved in the domestic enquiry. However, the Industrial Tribunal came to the conclusion that the charge of dishonesty is not proved. Therefore, the workmen partially succeeded before the Industrial Tribunal insofar as the charge of dishonesty. Thus the question before the Industrial Tribunal was as to what would be the punishment which was required to be imposed on the respondent workmen on the proven charge. The Industrial Tribunal in the penultimate paragraph of the impugned award held that the punishment of termination of the respondent workmen was illegal, pre-mature, absolutely arbitrary and unjustified and consequently, directed the appellant management to pay full back wages from the date of illegal termination with effect from 11.11.2009 till date of superannuation of respondent workmen. This order was put to challenge before the learned single Judge and the writ petition has been dismissed. Aggrieved by such order passed by the learned single Judge, the management has preferred this appeal

We have elaborately heard learned counsel for the parties and perused the materials on record. We find that Industrial Tribunal has committed a fundamental error while exercising its power under Section 11(A) of the Industrial Disputes Act. We say so because the Industrial Tribunal having held that the domestic enquiry to be valid and proper and having held that two of the three

charges having been proved obviously cannot annul the punishment imposed by the management. Section 11(A) of the Act deals with power of labour court, Industrial Tribunal or National Tribunal to give appropriate relief in case of discharge or dismissal of workmen. Such provision says that where an Industrial dispute relating to discharge or dismissal of workmen has been referred to a labour court, tribunal or national tribunal for adjudication and in course of adjudication proceedings the labour court tribunal or national tribunal, as the case may be, is satisfied that an order of discharge or dismissal was not justified, it may pass award setting aside the order of discharge or dismissal and direct reinstatement of workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. In terms of Section 11(A), the first and foremost requirement is the satisfaction of the tribunal that the order of dismissal or discharge was not justified. If it comes to such a conclusion, it can set aside the order of dismissal and direct reinstatement with certain terms and conditions and finally the tribunal has got power to award lesser punishment in lieu of dismissal.

We find from the award passed by the Tribunal that no such satisfaction has been arrived at. The workmen cannot take a stand that the Industrial Tribunal would be justified in directing the reinstatement with full benefits though having upheld conclusion of the management in respect of two of the charges and holding

the workmen guilty of those two charges. Therefore, at best, if the Industrial Tribunal on being satisfied that the order of discharge and dismissal was not justified in respect of two of the three charges then it is improper to give such relief to the workmen including awarding of lesser punishment for which the facts and circumstances of the case are required to be considered. It goes without saying that the Industrial Tribunal should record as to why the Industrial Tribunal seeks to substitute the punishment and what would be the appropriate lesser punishment.

It is a settled principle that interference with the quantum of punishment of an industrial tribunal or labour court is very limited and more so because the domestic enquiry has been held to be valid and proper. Therefore, the Industrial Tribunal cannot exercise any compassion and pass an award. If it proceeds to exercise its power under Section 11A and decides to award a lesser punishment, it shall do so only after recording satisfaction. Since we find no such satisfaction has been recorded by the Industrial Tribunal, the direction issued by the Industrial Tribunal setting aside order of termination and ordered to pay full back wages from the date of illegal termination with effect from 11.11.2009 till the date of superannuation is not sustainable in law.

For the above reasons, we are inclined to interfere to that extent so far as the interpretation given by the learned single Judge to Section 11A of the Act.

Such question could not arise in the case in hand as it appears to be an academic exercise done by the learned single Judge. In the result, the appeal is allowed and the order passed by the learned single Judge is set aside and consequently, portion of the award passed by the Industrial Tribunal setting aside the order of termination with a direction to pay full back wages from the date of illegal termination with effect from 11.11.2009 till the date of superannuation is not sustainable in law is set aside and the matter is remanded to the Industrial Tribunal to consider the issue regarding the quantum of punishment that should be imposed on the workmen. The Industrial Tribunal shall bear in mind that it is an award holding that the respondent workmen is guilty of two of the three charges stands confirmed and also the finding of the tribunal that the domestic enquiry was valid also stands confirmed. Bearing these factors in mind, the Industrial Tribunal shall apply the settled legal principles which have been laid down by the Hon'ble Supreme Court while exercising jurisdiction under Section 11A of the Act and pass reasoned order on merit in accordance with law.

Since the termination was of the year 2009 and the award was passed by the Industrial Tribunal on 19.02.2020, we request the Industrial Tribunal to give an early hearing to the matter subject to the parties cooperating with the tribunal preferably within two

months.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)